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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on July 9, 2013.

Date of Meeting: December 18, 2012

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:34 p.m., on Tuesday, December 18, 2012, all members having been notified of the time and place thereof.

### 1. **ROLL CALL**

The meeting was called to order by Mayor Rothschild and upon roll call, those present and absent were:

Present:

Regina Romero  
Paul Cunningham  
Karin Uhlich  
Shirley C. Scott  
Richard G. Fimbres  
Steve Kozachik  
Jonathan Rothschild

Vice Mayor, Council Member Ward 1  
Council Member Ward 2  
Council Member Ward 3  
Council Member Ward 4  
Council Member Ward 5  
Council Member Ward 6  
Mayor

Absent/Excused:

None

Staff Members Present:

Richard Miranda  
Michael Rankin  
Deborah Rainone

City Manager  
City Attorney  
Chief Deputy City Clerk

## **2. INVOCATION AND PLEDGE OF ALLEGIANCE**

The invocation was given by Reverend Lois Blei, Eastside Assembly of God, after which the Pledge of Allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Rothschild proclaimed December 18, 2012, as “Positive Anna-Tude Day.”

## **3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Rothschild announced City Manager’s communication number 457, dated December 18, 2012, was received into and made part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

Current event reports were provided by Vice Mayor Romero and Council Members Cunningham, Uhlich, Scott, Fimbres, and Kozachik. A recording of this item is available from the City Clerk’s Office for ten years from the date of this meeting.

## **4. CITY MANAGER’S REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Rothschild announced City Manager’s communication number 458, dated December 18, 2012, was received into and made part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

Current event report was given by Albert Elias, Assistant City Manager. A recording of this item is available from the City Clerk’s Office for ten years from the date of this meeting.

## **5. LIQUOR LICENSE APPLICATIONS**

Mayor Rothschild announced City Manager’s communication number 464, dated December 18, 2012, was received into and made part of the record. He asked the City Clerk to read the Liquor License Agenda.

- b. Liquor License Application(s)

New License(s)

- 1. Walgreens #13822, Ward 1  
550 N. Silverbell Rd.  
Applicant: Randy Allen Guse  
Series 10, City 103-12  
Action must be taken by: December 28, 2012

Staff has indicated the applicant is in compliance with city requirements.

2. Sheraton Tucson Hotel & Suites, Ward 2  
5151 E. Grant Rd.  
Applicant: Andrea Dahlman Lewkowitz  
Series 11, City 104-12  
Action must be taken by: December 30, 2012

Staff has indicated the applicant is in compliance with city requirements.

3. Hitz Smoke Shop, Ward 3  
1015 W. Prince Rd. #181  
Applicant: Robert Ortega Jr.  
Series 10, City 106-12  
Action must be taken by: January 5, 2013

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a new license application, "In all proceedings before the governing body of a city...the applicant bears the burden of showing that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license". (A.R.S. Section 4-201)

#### Location Transfer(s)

4. Sausage Deli, Ward 3  
754 E. Grant Rd.  
Applicant: Christopher Frank Fanelli  
Series 7, City 105-12  
Action must be taken by: December 29, 2012

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a location transfer, Mayor and Council may consider whether the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license at that location. (A.R.S. Section 4-203; Rule R19-1-102)

#### c. Special Event(s)

NOTE: There are no application(s) for special events scheduled for this meeting.

d. Agent Change/Acquisition of Control

1. Club 21, Ward 3  
2920 N. Oracle Rd.  
Applicant: Taft L. Jacob  
Series 6, City AC28-12  
Action must be taken by: January 5, 2013

Tucson Police Department and Revenue Investigations have indicated the applicant is in compliance with city requirements.

City Clerk's office has indicated the applicant is not in compliance with city requirements.

NOTE: The local governing body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control. (A.R.S. Section 4-203.F)

Deborah Rainone, Chief Deputy City Clerk, announced that the applicant had since paid the required fee and was therefore now in compliance with city requirements.

It was moved by Council Member Kozachik, duly seconded and carried by a voice vote of 7 to 0, to forward liquor license application Items 5b1 through 5b4 and 5d1 to the Arizona State Liquor Board with a recommendation for approval.

**6. CALL TO THE AUDIENCE**

Mayor Rothschild announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a public hearing. Speakers were limited to three-minute presentations.

Mayor Rothschild also announced that pursuant to the Arizona Open Meeting Law, individual Council Members may ask the City Manager to review the matter, ask that the matter be placed on a future agenda, or respond to criticism made by speakers. However, the Mayor and Council may not discuss or take legal action on matters raised during "call to the audience."

Comments were made by:

Robert Reus  
Taft Jacob

Keith Van Heyningen  
John Kromko

Billy Lolos  
Chris Gans

A recording of this item is available from the City Clerk's Office for ten years from the date of this meeting.

## **7. CONSENT AGENDA – ITEMS A THROUGH G**

Mayor Rothschild announced the reports and recommendations from the City Manager on the Consent Agenda were received into and made part of the record. He asked the City Clerk to read the Consent Agenda.

### **a. APPROVAL OF MINUTES**

1. Report from City Manager DEC18-12-456 CITY WIDE
2. Mayor and Council Regular Meeting Minutes of April 17, 2012
3. Mayor and Council Study Session Legal Action Report and Minutes of April 17, 2012

### **b. LAW ENFORCEMENT: APPROVING AND AUTHORIZING THE TUCSON POLICE CHIEF TO EXECUTE AGREEMENT DOCUMENTS AND AMENDMENTS FOR FUNDING RECEIVED BY THE DEPARTMENT OF HOMELAND SECURITY**

1. Report from City Manager DEC18-12-463 CITY WIDE
2. Resolution No. 21979 relating to Law Enforcement; approving and authorizing the Chief of the Tucson Police Department to execute agreement documents and amendments under the Department of Homeland Security; and declaring an emergency.

(This item was considered separately at the request of Council Member Cunningham.)

### **c. TUCSON CODE: AMENDING (CHAPTER 13) ADOPTION OF THE 2012 INTERNATIONAL FIRE CODE WITH LOCAL MODIFICATIONS**

1. Report from City Manager DEC18-12-459 CITY WIDE
2. Ordinance No. 11040 relating to Fire Code, adopting the 2012 International Fire Code with local modifications as the Fire Code for the City of Tucson; setting forth the penalties for violation of the Fire Code, as required by A.R.S. § 9-803; amending Tucson Code Section 13-3; repealing Tucson Code Section 13-6; and declaring an emergency.

### **d. WATER: FISCAL YEAR 2013 WATER CONSERVATION PROGRAM FUNDING RECOMMENDATIONS**

1. Report from City Manager DEC18-12-465 CITY WIDE AND OUTSIDE CITY

2. Resolution No. 21980 relating to Water; approving and authorizing the Citizens' Water Advisory Committee (CWAC) FY 2013 Water Conservation Program Funding Recommendations; and declaring an emergency.
- e. FINANCE: APPROVAL OF FISCAL YEARS 2012 AND 2013 INVOLUNTARY TORT JUDGMENTS
1. Report from City Manager DEC18-12-462 CITY WIDE
  2. Resolution No. 21978 relating to Fiscal Years 2014 and 2015 primary property tax levy; retroactively approving involuntary court ordered tort judgments from Litigation Awards from Fiscal Years (FYS) 2012 and 2013; and declaring an emergency.
- f. HOUSING AND COMMUNITY DEVELOPMENT: PRESERVE AMERICA DESIGNATION
1. Report from City Manager DEC18-12-461 CITY WIDE
  2. Resolution No. 21981 relating to Historic Preservation; supporting maintaining the designation of the City of Tucson as a Preserve America Community and directing that an application be submitted for such designation; and declaring an emergency.
- g. REAL PROPERTY: APPROVING A LEASE AGREEMENT WITH FOUNTAIN YOUTH MINISTRIES, INC. DBA: 6TH STREET GYM FOR SPACE LOCATED AT 1001 NORTH MAIN AVENUE (CONTINUED FROM THE MEETING OF DECEMBER 4, 2012)
1. Report from City Manager DEC18-12-454 WARD 1
  2. Ordinance No. 11043 relating to Real Property; authorizing and approving the Lease Agreement between the City of Tucson and Fountain Youth Ministries, Inc., dba 6th Street Gym, for occupancy of space located at 1001 North Main Avenue; and declaring an emergency.

It was moved by Council Member Scott, duly seconded, and passed by a roll call vote of 7 to 0, that Consent Agenda Items a – g, with the exception of Item b, which was considered separately, be passed and adopted and the proper action taken.

## **7. CONSENT AGENDA – ITEM B**

### **b. LAW ENFORCEMENT: APPROVING AND AUTHORIZING THE TUCSON POLICE CHIEF TO EXECUTE AGREEMENT DOCUMENTS AND AMENDMENTS FOR FUNDING RECEIVED BY THE DEPARTMENT OF HOMELAND SECURITY**

1. Report from City Manager DEC18-12-463 CITY WIDE
2. Resolution No. 21979 relating to Law Enforcement; approving and authorizing the Chief of the Tucson Police Department to execute agreement documents and amendments under the Department of Homeland Security; and declaring an emergency.

Council Member Cunningham indicated he had concerns about providing a department head with City Manager power. He said in this situation the City could potentially take in money from the Department of Homeland Security and there was no way to know it was actually taken in. He said because the background materials were a little vague, there needed to be mechanisms in place that ensured this did not happen and why this power was being afforded to a department head.

Vice Mayor Romero echoed those concerns and asked the City Attorney to address the language in the resolution. She said the language in the background materials was more specific than in the resolution.

Michael Rankin, City Attorney, said the resolution simply added the Chief of Police to have the same authority as the City Manager in executing documents to apply for grants from the Department of Homeland Security.

Council Member Cunningham asked if this would be the only department to have such power.

Kelly Gottschalk, Assistant City Manager, said grant money, as with all money that came into the City, was subject to the City's internal controls.

Council Member Cunningham asked for clarification in the event the Police Chief signed off on a grant that later committed the City to matching funds.

Richard Miranda, City Manager, said there were protocols in place wherein typically there was communication between the City Manager's Office and the department head or the office itself. If matching funds were required, that clearance came from the City Manager.

Vice Mayor Romero asked if that language could be added to the resolution.

Mr. Rankin said that it would be possible to add language that, in the event any grants in question required any matching funds or potential costs to the City, they receive City Manager approval.

Vice Mayor Romero said she was not sure she wanted it to be limited to just matching funds. She said there may be other federal grants that the Mayor and Council would not agree with. She asked that there be some sort of protocol to touch base with the Mayor and Council for any grant requests.

Mr. Rankin said if that was the will of the Mayor and Council, language could be added that prior to the execution of any of the agreements as authorized in Section 1, the Chief of Police or the City Manager would notify the Mayor and Council.

Roberto Villaseñor, Tucson Chief of Police, said he understood the concerns from a stewardship perception. He said sometimes the timeline on grants were so short that it was not possible to get through all the approval levels up to the City Manager in time. He said, although these may be small level grants, as they are added up, they were significant. Although they could control getting signatures within the Police Department, within the City Manager's Office there were competing interests and could sometimes cause a delay and they missed getting grants due to the short turn around times. Adding in the time needed for the Mayor and Council approval did not allow them to pursue some of these grants. He said the guidelines were very clear as to what type of grant money they could go after and the expenditures at any cost level. He said if the grant was beyond department level approval, this could be coordinated with the City Manager. He said these were Department of Homeland Security grants that also needed to go before regional committees, of which he listed a few.

Council Member Cunningham asked how many of the grants had a back-out clause.

Gregory Mammana, Tucson Police Department Lieutenant, said he was the Chair of the Tucson Urban Area Security Initiative (UASI). He explained that if any issue arose with the grant they could simply not accept the funding.

Council Member Cunningham asked that the Chief of Police be required to inform the City Manager about these grants after the fact. He said otherwise control was given to a department head, which was not a customary thing for the Mayor and Council to do.

Mayor Rothschild suggested that the first sentence read "the Chief of Police with the City Manager's approval". He said this could be done with an email, but he did not know if that satisfied the Council.



Vice Mayor Romero said she understood, but thought that the language was broad. She noted that at the end of the communication it said, “DHS funding for equipment implies that any future maintenance costs will be absorbed by department if required.” She said she wanted to make sure transparency was ensured by adding protocols to the policies that this or any future Mayor and Council would want to see the Police Department follow.

Council Member Cunningham asked for such language to be added.

Council Member Kozachik said he was not sure that such language already existed. He noted in the last sentence of the issue it said, “The City Manager’s Office and all other offices of the City who track and review the use of these funds will continue to receive information on a regular basis.” He said he would support the proposal as written.

Council Member Cunningham noted that this was in the background materials, not in the resolution itself.

Council Member Kozachik said that the protocols already existed for the Chief of Police to check with the City Manager before pursuing such grants.

Mayor Rothschild asked the City Attorney to add language that would indicate that the Chief of Police notify the City Manager.

Mr. Rankin said he understood the Chief of Police would be able to request the grants without the City Manager’s approval following protocols dictated by the City.

Vice Mayor Romero said she did not think it was difficult to add this type of language so everyone felt comfortable moving forward.

Mr. Rankin said the amendment would read as follows: Section 1. “Subject to protocol established by the City Manager, the Chief of Police, in addition to the City Manager, may execute agreement documents and amendments to agreement documents required by federal authorities for participation by the Tucson Police Department and the U.S. Department of Homeland Security grant programs.”

Council Member Cunningham moved that the resolution include the additions mentioned by the City Attorney.

Council Member Kozachik asked what protocols already existed.

Mr. Miranda said typically what happened was the grant was reviewed by the Chief of Police who then sends a memorandum to the City Manager making a recommendation regarding the grant. He said he would review the grant and recommendations and then he would either sign it or not.

Ms. Gottschalk added that there had been situations where the grant may look like it might contribute to ongoing operations and maintenance. In that case, the City Manager talked to her to get an opinion on where the additional funding would come from.

Council Member Cunningham asked if the proposed amendment would then eliminate the protocols mentioned above.

Ms. Gottschalk said it would not.

Chief Villaseñor said these protocols were already part of their considerations before submitting a grant, whether it was for the initial outlay for funding or any operations and maintenance considerations.

Mayor Rothschild asked the City Attorney if these protocols were in writing.

Mr. Rankin replied that if they were not they would be.

It was moved by Council Member Cunningham, duly seconded, and passed by a voice vote of 7 to 0, that Consent Agenda Item b, be passed and adopted, with the amendment, and the proper action taken.

**8. PUBLIC HEARING: AMENDING TUCSON CODE (CHAPTER 6) ADOPTING THE 2012 INTERNATIONAL BUILDING CODES**

Mayor Rothschild announced City Manager's communication number 466, dated December 18, 2012, was received into and made part of the record. He also announced this was the time and place legally advertised for a public hearing on amending and adoption the 2012 Edition of the International Building Codes and the 2011 Edition of the national Electrical Code. He asked staff if they had any presentations.

Ernie Duarte, Planning and Development Services Department Director, said building codes were updated every three years by the International Code Council and cities typically follow suit in that regard. The Tucson-Pima County Joint Consolidated Code Committee had been reviewing the International Codes since March 2012 and made recommendations on local amendments and recommended adoption as presented. Additionally, the residential gray water requirements remained in the residential code as directed by the Mayor and Council, but would be part of additional discussion between staff, Council offices and effected stakeholders. Any gray water and water conservation amendments would be returned to the Mayor and Council in April 2013. He said, although not part of the codes under consideration, staff would allow the use of 2012 Uniform Plumbing Code as an alternate method of design by an appeal to the building official in lieu of the International Plumbing Code as presented.

Mayor Rothschild said the public hearing was scheduled to last for no more than one hour and speakers were limited to five minute presentations. He asked that speakers come forward when called and state their name, whether or not they lived in the city, whom they represented and whether or not they were a paid speaker.

Comments were made by:

Ed Verburg  
Kenneth Cawthorne

Alan Tonelson

Emily Brott

It was moved by Council Member Fimbres, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Rothschild asked the City Clerk to read Ordinance 11042 by number and title only.

Ordinance No. 11042 relating to Buildings, Electricity, Plumbing and Mechanical Code; amending the Tucson Code Chapter 6, Buildings, Electricity, Plumbing and Mechanical Code by amending Article III, Buildings, Section 6-34, Building code adopted by adopting the International Building Code 2012 Edition with local amendments; Section 6-38, Residential code adopted by adopting the International Residential Code, 2012 Edition with local amendments; Section 6-40, Energy conservation code adopted by adopting the International Energy Conservation Code, 2012 Edition with local amendments; Section 6-66, Existing building code adopted, by adopting the International Existing Building Code, 2012 Edition with local amendments; Article IV, Electricity, Section 6-84, Electrical code adopted, by adopting the 2011 National Electrical Code with local amendments; Article V, Plumbing Code, Section 6-124, Plumbing code adopted by adopting the International Plumbing Code, 2012 Edition with local amendments; Article VI, Mechanical Code, Section 6-164, Mechanical code adopted by adopting the International Mechanical Code, 2012 Edition with local amendments; Section 6-167, Fuel gas code by adopting the International Fuel Gas Code 2012 Edition with local amendments; and declaring an emergency.

Council Member Uhlich said she wanted to make it clear that the Mayor and Council was adopting the International Building Codes with the noted changes, while retaining the gray water ordinance provisions, allowing staff to work with stakeholders. The issues of the gray water and water conservation elements would be revisited in the Spring of 2013.

It was moved by Council Member Uhlich, duly seconded, to pass and adopt Ordinance 11042.

Council Member Kozachik noted that the Uniform Plumbing Code was not among the list of codes in the Ordinance.

Mr. Duarte said staff was not recommending adoption of the Uniform Plumbing Code, but were allowing its use as an alternate means, which was in line with the code.

Vice Mayor Romero said she wanted to make sure the members of the Tucson Water Coalition were included as stakeholders in the water conservation discussions.

Ordinance 11042 was declared passed and adopted by a roll call vote of 7 to 0.

**9. ZONING: (C9-11-06) WELLS FARGO (BURGER KING) – 22ND STREET, SR AND RX-1 TO C-1 ZONE, ORDINANCE ADOPTION**

Mayor Rothschild announced City Manager's communication number 460, dated December 18, 2012, was received into and made part of the record.

Mayor Rothschild asked the City Clerk to read Ordinance 11041 by number and title only.

Ordinance No. 11041 relating to Zoning; amending zoning district boundaries in the area located at the southwest corner of East 22nd Street and South Harrison Road in Case C9-11-06 Wells Fargo (Burger King) - 22nd Street, SR and RX-1 to C-1 Zone; and setting an effective date.

Council Member Cunningham thanked his staff and said that with the changes there was no over saturation of business, the drive thru was removed and Robb Wash acted as a good buffer to the neighborhood.

It was moved by Council Member Cunningham, duly seconded, and passed by a roll call vote of 7 to 0, to approve the request as recommended by the Zoning Examiner and pass and adopt Ordinance 11041.

**10. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS**

Mayor Rothschild announced City Manager's communication number 455, dated December 18, 2012, was received into and made part of the record.

Mayor Rothschild asked if there were any personal appointments to be made.

Mayor Rothschild announced his personal appointment of Demion Clinco to the Tucson-Pima County Historical Commission (TPCHC).

**11. ADJOURNMENT: 7:06 p.m.**

Mayor Rothschild announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, January 8, 2013, at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

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MAYOR

ATTEST:

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CITY CLERK

**CERTIFICATE OF AUTHENTICITY**

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 18th day of December 2012, and do hereby certify that it is an accurate transcription.

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DEPUTY CITY CLERK

RWR:dp:arf